

Military Departments in the performance of duties under the part.

(F) Make recommendations, based on program and operational information, for changes in the budget, organization, and general management of the special education program, and in policy and procedure.

(G) Comment publicly on rules or standards regarding the education of individuals with disabilities.

(H) Assist in developing recommendations regarding the transition of toddlers with disabilities to preschool services.

(b) The Assistant Secretary of Defense for Health Affairs in consultation with the USD(P&R), the GC, DoD, and the Secretaries of the Military Departments, shall:

(1) Establish staffing and personnel standards for personnel who provide early intervention services and medically related services.

(2) Develop and implement a comprehensive system of personnel development in accordance with 20 U.S.C. 1413(a)(3), including the training of professionals, paraprofessionals and primary referral sources, regarding the basic components of early intervention services and medically related services. Such a system may include:

(i) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers.

(ii) Ensuring that early intervention service providers and medically related service providers are fully and appropriately qualified to provide early intervention services and medically related services, respectively.

(iii) Training personnel to work in the military environment.

(iv) Training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program to a preschool program.

(3) Develop and implement a system for compiling data on the numbers of infants and toddlers with disabilities and their families in need of appropriate early intervention services, the numbers of such infants and toddlers and their families served, the types of services, and other information re-

quired to evaluate the implementation of early intervention programs.

(4) Resolve disputes among the DoD Components arising under appendix A of this part.

(c) *Secretaries of the Military Departments* shall:

(1) Provide quality assurance for medically related services in accordance with personnel standards and staffing standards under DoD Directive 6025.13⁵ developed by the Assistant Secretary of Defense for Health Affairs (ASD(HA)).

(2) Plan, develop, and implement a comprehensive, coordinated, intercomponent, community-based system of early intervention services for infants and toddlers with disabilities (birth through 2 inclusive) and their families who are living on an installation with a Section 6 School Arrangement, or who but for their age, would be entitled to enroll in a Section 6 School Arrangement, using the procedures established by this part and guidelines from the ASD(HA) on staffing and personnel standards.

(3) Undertake activities to ensure compliance with this part through technical assistance, program evaluation, and monitoring.

(d) The *Director, Defense Office of Hearings and Appeals (DOHA)* shall ensure the provision of impartial due process hearings under appendix C of this part.

§80.6 Procedures.

(a) Procedures for the provision of early intervention services for infants and toddlers with disabilities and their families are in appendix A to this part. Provision of early intervention services includes establishing a system of coordinated, comprehensive, multidisciplinary, intercomponent services providing appropriate early intervention services to all eligible infants and toddlers with disabilities and their families.

(b) Procedures for special educational programs (including related services) for preschool children and children with disabilities (3-21 years inclusive) are in appendix B to this part.

⁵ See footnote 1 to §80.1(c).

(c) Procedures for adjudicative requirements required by Pub. L. 101-476, as amended, and Pub. L. 102-119 are in appendix C to this part. These procedures establish adjudicative requirements whereby the parents of an infant, toddler, preschool child or child with a disability and the military department concerned or Section 6 School System are afforded an impartial due process hearing on early intervention services or on the identification, evaluation, and educational placement of, and the free appropriate public education provided to, such infant, toddler, preschool child or child, as the case may be.

APPENDIX A TO PART 80—PROCEDURES FOR THE PROVISION OF EARLY INTERVENTION SERVICES FOR INFANTS AND TODDLERS WITH DISABILITIES, AGES 0–2 YEARS (INCLUSIVE), AND THEIR FAMILIES

A. Requirements For A System of Early Intervention Services

1. A system of coordinated, comprehensive, multidisciplinary, and intercomponent programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families shall include the following minimum components:

- a. A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant and toddler with a disability and the priorities and concerns of the infant's or toddler's family to assist in the development of the infant or toddler with a disability.
- b. A mechanism to develop, for each infant and toddler with a disability, an IFSP and early intervention services coordination, in accordance with such service plan.
- c. A comprehensive child-find system, coordinated with the appropriate Section 6 School Arrangement, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources, such as the CDC and the pediatric clinic.
- d. A public awareness program including information on early identification of infants and toddlers with disabilities and the availability of resources in the community to address and remediate these disabilities.
- e. A central directory that includes a description of the early intervention services and other relevant resources available in the community.

B. Each Military Medical Department Shall Develop and Implement a System to Provide for:

1. The administration and supervision of early intervention programs and services, in-

cluding the identification and coordination of all available resources.

2. The development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families in a timely manner.

3. The execution of agreements with other DoD components necessary for the implementation of this appendix. Such agreements must be coordinated with the ASD(HA) and the GC, DoD, in consultation with the USD(P&R).

4. The collection and reporting of data required by ASD(HA).

5. A multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs.

6. A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of its infant or toddler with a disability.

C. Each Military Medical Department Shall Develop and Implement a Program to Ensure That an IFSP is Developed for Each Infant or Toddler With a Disability and the Infant's or Toddler's Family According to the Following Procedures:

1. The IFSP shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate), based on the needs of the infant or toddler and family.

2. Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

- a. The parent or parents of the infant or toddler.
- b. Other family members, as requested by a parent, if feasible to do so.
- c. An advocate, if his or her participation is requested by a parent.
- d. The Early Intervention Program Services Coordinator who has been working with the family since the initial referral of the infant or toddler or who has been designated as responsible for the implementation of the IFSP.
- e. A person or persons directly involved in conducting the evaluation and assessments.
- f. Persons who will be providing services to the infant, toddler, or family, as appropriate.
- g. If a person or persons listed in paragraph C.2 of this section is unable to attend a meeting, arrangements must be made for involvement through other means, including:
 - (1) Participating in a telephone call.
 - (2) Having a knowledgeable authorized representative attend the meeting.
 - (3) Making pertinent records available at the meeting.

3. The IFSP shall be developed within a reasonable time after the assessment. With the parent's consent, early intervention

services may start before the completion of such an assessment under an IFSP.

4. The IFSP shall be in writing and contain:

a. A statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on acceptable objective criteria.

b. A statement of the family's resources, priorities, and concerns for enhancing the development of the family's infant or toddler with a disability.

c. A statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary.

d. A statement of the specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services.

e. A statement of the natural environments in which early intervention services shall be provided.

f. The projected dates for initiation of services and the anticipated duration of such services.

g. The name of the Early Intervention Program Service Coordinator.

h. The steps to be taken supporting the transition of the toddler with a disability to preschool services or other services to the extent such services are considered appropriate.

5. The contents of the IFSP shall be fully explained to the parents by the Early Intervention Program Service Coordinator, and informed written consent from such parents shall be obtained before the provision of early intervention services described in such plan. If the parents do not provide such consent with respect to a particular early intervention service, then the early intervention services to which such consent is obtained shall be provided.

D. Procedural Safeguards for the Early Intervention Program

1. The procedural safeguards include:

a. The timely administrative resolution of complaints by the parent(s), including hearing procedures (appendix C to this part).

b. The right to protection of personally identifiable information under 32 CFR part 310.

c. The right of the parent(s) to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service without jeopardizing the delivery of other early interven-

tion services to which such consent is obtained.

d. The opportunity for the parent(s) to examine records on assessment, screening, eligibility determinations, and the development and implementation of the IFSP.

e. Written prior notice to the parent(s) of the infant or toddler with a disability whenever the Military Department concerned proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the infant and toddler with a disability.

f. Procedures designed to ensure that the notice required in paragraph D.1.e. of this appendix fully informs the parents in the parents' native language, unless it clearly is not feasible to do so.

g. During the pending of any proceeding under appendix C to this part, unless the Military Department concerned and the parent(s) otherwise agree, the infant or toddler shall continue to receive the early intervention services currently being provided, or, if applying for initial services, shall receive the services not in dispute.

APPENDIX B TO PART 80—PROCEDURES FOR SPECIAL EDUCATIONAL PROGRAMS (INCLUDING RELATED SERVICES) FOR PRESCHOOL CHILDREN AND CHILDREN WITH DISABILITIES (3-21 YEARS INCLUSIVE)

A. Identification and Screening

1. Each Section 6 School Arrangement shall locate, identify, and, with the consent of a parent of each preschool child or child, evaluate all preschool children or children who are receiving or are entitled to receive an education from Section 6 School Arrangements and who may need special education and/or related services.

2. Each Section 6 School Arrangement shall:

a. Provide screening, through the review of incoming records and the use of basic skills tests in reading, language arts, and mathematics, to determine whether a preschool child or child may be in need of special education and related services.

b. Analyze school health data for those preschool children and children who demonstrate possible disabling conditions. Such data shall include:

(1) Results of formal hearing, vision, speech, and language tests.

(2) Reports from medical practitioners.

(3) Reports from other appropriate professional health personnel as may be necessary, under this part, to aid in identifying possible disabling conditions.

c. Analyze other pertinent information, including suspensions, exclusions, other disciplinary actions, and withdrawals, compiled

and maintained by Section 6 School Arrangements that may aid in identifying possible disabling conditions.

3. Each Section 6 School Arrangement, in cooperation with cognizant authorities at the installation on which the Section 6 School Arrangement is located, shall conduct ongoing child-find activities that are designed to identify all infants, toddlers, preschool children, and children with possible disabling conditions who reside on the installation or who otherwise either are entitled, or will be entitled, to receive services under this part.

a. If an element of the Section 6 School Arrangement, a qualified professional authorized to provide related services, a parent, or other individual believes that an infant, toddler, preschool child or child has a possible disabling condition, that individual shall be referred to the appropriate CSC or early intervention coordinator.

b. A Section 6 School Arrangement CSC shall work in cooperation with the Military Departments in identifying infants, toddlers, preschool children and children with disabilities (birth to 21 years inclusive).

B. Evaluation Procedures

1. Each CSC will provide a full and comprehensive diagnostic evaluation of special educational, and related service needs to any preschool child or child who is receiving, or entitled to receive, educational instruction from a Section 6 School Arrangement, operated by the Department of Defense under Directive 1342.21, and who is referred to a CSC for a possible disability. The evaluation will be conducted before any action is taken on the development of the IEP or placement in a special education program.

2. Assessment materials, evaluation procedures, and tests shall be:

a. Racially and culturally nondiscriminatory.

b. Administered in the native language or mode of communication of the preschool child or child unless it clearly is not feasible to do so.

c. Validated for the specific purpose for which they are used or intended to be used.

d. Administered by qualified personnel, such as a special educator, school psychologist, speech therapist, or a reading specialist, in conformity with the instructions provided by the producers of the testing device.

e. Administered in a manner so that no single procedure is the sole criterion for determining eligibility and an appropriate educational program for a disabled preschool child or child.

f. selected to assess specific areas of educational strengths and needs, not merely to provide a single general intelligence quotient.

3. The evaluation shall be conducted by a multidisciplinary team and shall include a

teacher or other specialist with knowledge in the areas of the suspected disability.

4. The preschool child or child shall be evaluated in all areas related to the suspected disability. When necessary, the evaluation shall include:

a. The current level of academic functioning, to include general intelligence.

b. Visual and auditory acuity.

c. Social and emotional status, to include social functioning within the educational environment and within the family.

d. Current physical status, including perceptual and motor abilities.

e. Vocational transitional assessment (for children ages 14-21 years (inclusive)).

5. The appropriate CSC shall met as soon as possible after the preschool child's or child's formal evaluation to determine whether he or she is in need of special education and related services. The preschool child's or child's parents shall be invited to the meeting and afforded the opportunity to participate in such a meeting.

6. The school CSC shall issue a written report that contains:

a. A review of the formal and informal diagnostic evaluation findings of the multidisciplinary team.

b. A summary of information from the parents, the preschool child or child, or other persons having significant previous contact with the preschool child or child.

c. A description of the preschool child's or child's current academic progress, including a statement of his or her learning style.

d. A description of the nature and severity of the preschool child's or child's disability(ies).

7. A preschool child or child with a disability shall receive an individual comprehensive diagnostic evaluation every 3 years, or more frequently if conditions warrant, or if the preschool child's or child's parent, teacher, or related service provider requests an evaluation. The scope and nature of the reevaluation shall be determined individually, based upon the preschool child's or child's performance, behavior, and needs when the reevaluation is conducted, and be used to update or revise the IEP.

C. Individualized Education Program (IEP)

1. Section 6 School Arrangements shall ensure that an IEP is developed and implemented for each preschool child or child with a disability enrolled in a Section 6 School Arrangement or placed on another institution by a Section 6 School Arrangement CSC under this part.

2. Each IEP shall include:

a. A statement of the preschool child's or child's present levels of educational performance.

b. A statement of annual goals, including short-term instructional objectives.

c. A statement of the specific special educational services and related services to be provided to the preschool child or child (including the frequency, number of times per week/month and intensity, amount of times each day) and the extent to which the preschool child or child may be able to participate in regular educational programs.

d. The projected anticipated date for the initiation and the anticipated length of such activities and services.

e. Appropriate objective criteria and evaluation procedures and schedules for determining, on an annual basis, whether educational goals and objectives are being achieved.

f. A statement of the needed transition services for the child beginning no later than age 16 and annually thereafter (and when determined appropriate for the child, beginning at age 14 or younger) including, when appropriate, a statement of DoD Component responsibilities before the child leaves the school setting.

3. Each preschool child or child with a disability shall be provided the opportunity to participate, with adaptations when appropriate, in the regular physical education program available to students without disabilities unless:

a. The preschool child or child with a disability is enrolled full-time in a separate facility; or

b. The preschool child or child with a disability needs specially designed physical education, as prescribed in his or her IEP.

4. If specially designed physical education services are prescribed in the IEP of a preschool child or child with a disability, the Section 6 School Arrangement shall provide such education directly, or shall make arrangements for the services to be provided through a non-Section 6 School Arrangement or another facility.

5. Section 6 School Arrangements shall ensure that a preschool child or child with a disability, enrolled by a CSC in a separate facility, receives appropriate, physical education in compliance with this part.

6. The IEP for each preschool child or child with a disability shall be developed and reviewed at least annually in meetings that include the following participants:

a. The designated representative of the Section 6 School Arrangement, who is qualified to supervise the provision of special education. Such representative may not be the preschool child's or child's special education teacher.

b. One, or more, of the preschool child's or child's regular education teachers, if appropriate.

c. The preschool child's or child's special education teacher or teachers.

d. One, or both, of the preschool child's or child's parents.

e. The child, if appropriate.

f. For a preschool child or child with a disability who has been evaluated, a member of the evaluation team or another person knowledgeable about the evaluation procedures used with that student and familiar with the results of the evaluation.

g. Other individuals, at the reasonable discretion of the parent(s) or the school.

7. Section 6 School Arrangements shall:

2a. Ensure that an IEP meeting is held, normally within 10 working days, following a determination by the appropriate CSC that the preschool child or child is eligible to receive special education and/or related services.

b. Address the needs of a preschool child or child with a current IEP who transfers from a school operated by the DoD in accordance with 32 CFR part¹ or from a Section 6 School Arrangement to a Section 6 School Arrangement, by:

(1) Implementing the current IEP; or

(2) Revising the current IEP with the consent of a parent; or

(3) Initiating, with the consent of a parent, an evaluation of the preschool child or child, while continuing to provide appropriate services through a current IEP; or

(4) Initiating, with the consent of the parent, an evaluation of the preschool child or child without the provision of the services in the current IEP; or

(5) Initiating mediation, and if necessary, due process procedures.

c. Afford the preschool child's or child's parent(s) the opportunity to participate in every IEP or CSC meeting about their preschool child or child by:

(1) Providing the parent(s) adequate written notice of the purpose, time, and place of the meeting.

(2) Attempting to schedule the meeting at a mutually agreeable time and place.

8. If neither parent can attend the meeting, other methods to promote participation by a parent, such as telephone conversations and letters, shall be used.

9. A meeting may be conducted without a parent in attendance if the Section 6 School Arrangement is unable to secure the attendance of the parent. In this case, the Section 6 School Arrangement must have written records of its attempts to arrange a mutually acceptable time and place.

10. If the parent(s) attends the IEP meeting, the Section 6 School Arrangement shall take necessary action to ensure that at least one of the parents understands the proceedings at the meeting, including providing an interpreter for a parent who is deaf or whose native language is other than English.

¹Copies of DoD Directive 1342.6 may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

11. The section 6 School Arrangement shall give a parent a copy of the preschool child's IEP.

12. Section 6 School Arrangements shall provide special education and related services, in accordance with an IEP, provided that the Department of Defense, its constituent elements, and its personnel, are not accountable if a preschool child or child does not achieve the growth projected in the IEP.

13. Section 6 School Arrangements shall ensure that an IEP is developed and implemented for each preschool child or child with a disability whom the CSC places in a non-Section 6 School or other facility.

D. Placement Procedures and Least Restrictive Environment

1. The placement of a preschool child or child in any special education program by the Section 6 School Arrangement shall be made only under an IEP and after a determination has been made that such student has a disability and needs special education and/or related services.

2. The Section 6 School Arrangement CSC shall identify the special education and related services to be provided under the IEP.

3. A placement decision may not be implemented without the consent of a parent of the preschool child or child, except as otherwise provided in accordance with this part.

4. The placement decision must be designed to educate a preschool child or child with a disability in the least restrictive environment so that such student is educated to the maximum extent appropriate with students who do not have disabilities. Special classes, separate schooling, or other removal of preschool children or children with disabilities from the regular educational environment shall occur only when the nature or severity of the disability is such that the preschool child or child with disabilities cannot be educated satisfactorily in the regular classes with the use of supplementary aids and services, including related services.

5. Each educational placement for a preschool child or child with a disability shall be:

a. Determined at least annually by the appropriate CSC.

b. Based on the preschool child or child's IEP.

c. Located as close as possible to the residence of the parent who is sponsoring the preschool child or child for attendance in a Section 6 School Arrangement.

d. Designed to assign the preschool child or child to the school such student would attend if he or she were not a student with a disability, unless the IEP requires some other arrangement.

e. Predicated on the consideration of all factors affecting the preschool child's or child's well-being, including the effects of separation from parent(s).

f. To the maximum extent appropriate, designed so that the preschool child or child participates in school activities, including meals and recess periods, with students who do not have a disability.

E. Children With Disabilities Placed in Non-Section 6 School Arrangements

1. Before a Section 6 School Arrangement CSC, with the concurrence of the Section 6 School Arrangement Superintendent concerned, places a preschool child or child with a disability in a non-Section 6 School or facility, the Section 6 School CSC shall conduct a meeting in accordance with this part to initiate the development of an IEP for such student.

2. Preschool children and children with disabilities eligible to receive instruction in Section 6 School Arrangements who are referred to another school or facility by the Section 6 School CSC have all the rights of students with disabilities who are attending the Section 6 School Arrangement.

a. If a Section 6 School Arrangement CSC places a preschool child or child with a disability in a non-Section 6 School Arrangement or facility as a means of providing special education and related services, the program of that facility, including nonmedical care, room, and board, as set forth in the student's IEP, must be at no cost to the student or the student's parents.

b. A Section 6 School Arrangement CSC may place a preschool child or child with a disability in a non-Section 6 School Arrangement or facility only if required by an IEP. An IEP for a student placed in a non-Section 6 School is not valid until signed by the Section 6 School Arrangement Superintendent, or designee, who must have participated in the IEP meeting. The IEP shall include determinations that:

(1) The Section 6 School Arrangement does not currently have, and cannot reasonably create, an educational program appropriate to meet the needs of the student with a disability.

(2) The non-Section 6 School Arrangement or facility and its educational program conform to this part.

3. A Section 6 School Arrangement is not responsible for the cost of a non-Section 6 School Arrangement placement when placement is made unilaterally, without the approval of the cognizant CSC and the Superintendent, unless it is directed by a hearing officer under appendix C of this part or a court of competent jurisdiction.

F. Procedural Safeguards

1. Parents shall be given written notice before the Section 6 School Arrangement CSC proposes to initiate or change, or refuses to initiate or change, either the identification, evaluation, or educational placement of a

preschool child or child receiving, or entitled to receive, special education and related services from a Section 6 School Arrangement, or the provision of a free appropriate public education by the Section 6 School Arrangement to the child. The notice shall fully inform a parent of the procedural rights conferred by this part and shall be given in the parent's native language, unless it clearly is not feasible to do so.

2. The consent of a parent of a preschool child or child with a disability or suspected of having a disability shall be obtained before any:

- a. Initiation of formal evaluation procedures;
- b. Initial special educational placement; or
- c. Change in educational placement.

3. If a parent refuses consent to any formal evaluation or initial placement in a special education program, the Section 6 School Arrangement Superintendent may initiate an impartial due process hearing, as provided in appendix C of this part to show why an evaluation or placement in a special education program should occur without such consent. If the hearing officer sustains the Section 6 School Arrangement CSC position in the impartial due process hearing, the appropriate CSC may evaluate or provide special education and related services to the preschool child or child without the consent of a parent, subject to the parent's due process rights.

4. A parent is entitled to an independent evaluation of his or her preschool child or child at the Section 6 School Arrangement's expense, if the parent disagrees with the findings of an evaluation of the student conducted by the school and the parent successfully challenges the evaluation in an impartial due process hearing.

a. If an independent evaluation is provided at the expense of a Section 6 School Arrangement, it must meet the following criteria:

- (1) Conform to the requirements of this part.
- (2) Be conducted, when possible, within the area where the preschool child or child resides.
- (3) Meet applicable DoD standards governing persons qualified to conduct an evaluation.

b. If the final decision rendered in an impartial due process hearing sustains the evaluation of the Section 6 School Arrangement CSC, the parent has the right to an independent evaluation, but not at the expense of the Department of Defense or any DoD Component.

5. The parents of a preschool child or child with a disability shall be afforded an opportunity to inspect and review all relevant educational records concerning the identification, evaluation, and educational placement of such student, and the provision of a

free appropriate public education to him or her.

6. Upon complaint presented in a written petition, the parent of a preschool child or child with a disability or the Section 6 School System shall have the opportunity for an impartial due process hearing provided by the Department of Defense as prescribed by appendix C of this part.

7. During the pendency of any impartial due process hearing or judicial proceeding on the identification, evaluation, or educational placement of a preschool child or child with a disability receiving an education from a Section 6 School Arrangement or the provision of a free appropriate public education to such a student, unless the Section 6 School Arrangement and a parent of the student agree otherwise, the student shall remain in his or her present educational placement, subject to the disciplinary procedures prescribed in this part.

8. If a preschool child or child with a disability, without a current IEP, who is entitled to receive educational instruction from a Section 6 School Arrangement is applying for initial admission to a Section 6 School Arrangement, that student shall enter that Arrangement on the same basis as a student without a disability.

9. The parent of a preschool child or child with a disability or a Section 6 School Arrangement employee may file a written communication with the Section 6 School Arrangement Superintendent about possible general violations of this part or Pub. L. 101-476, as amended. Such communications will not be treated as complaints under appendix C of this part.

G. Disciplinary Procedures

1. All regular disciplinary rules and procedures applicable to students receiving educational instruction in the Section 6 School Arrangements shall apply to preschool children and children with disabilities who violate school rules and regulations or disrupt regular classroom activities, subject to the provisions of this section.

2. The appropriate CSC shall determine whether the conduct of a preschool child or child with a disability is the result of that disability before the long-term suspension (10 consecutive or cumulative days during the school year) or the expulsion of that student.

3. If the CSC determines that the conduct of such a preschool child or child with a disability results in whole or part from his or her disability, that student may not be subject to any regular disciplinary rules and procedures; and

a. The student's parent shall be notified in accordance with this part of the right to have an IEP meeting before any change in the student's special education placement. (A termination of the student's education for

more than 10 days, either cumulative or consecutive, constitutes a change of placement.)

b. The Section 6 School Arrangement CSC or another authorized school official shall ensure that an IEP meeting is held to determine the appropriate educational placement for the student in consideration of his or her conduct before the tenth cumulative day of the student's suspension or an expulsion.

4. A preschool child or child with a disability shall neither be suspended for more than 10 days nor expelled, and his or her educational placement shall not otherwise be changed for disciplinary reasons, unless in accordance with this section, except that:

a. This section shall be applicable only to preschool children and children determined to have a disability under this part.

b. Nothing contained herein shall prevent the emergency suspension of any preschool child or child with a disability who endangers or reasonable appears to endanger the health, welfare, or safety of himself or herself, or any other student, teacher, or school personnel, provided that:

(1) The appropriate Section 6 School Arrangement CSC shall immediately meet to determine whether the preschool child's or child's conduct results from his or her disability and what change in special education placement is appropriate for that student.

(2) The child's parent(s) shall be notified immediately of the student's suspension and of the time, purpose, and location of the CSC meeting and their right to attend the meeting.

(3) A component is included in the IEP that addresses the behavioral needs of the student.

(4) The suspension of the student is only effective for the duration of the emergency.

APPENDIX C TO PART 80—HEARING PROCEDURES

A. Purpose

This appendix establishes adjudicative requirements whereby the parents of infants, toddlers, preschool children, and children who are covered by this part and, as the case may be, the cognizant Military Department or Section 6 School System are afforded impartial due process hearings and administrative appeals on the early intervention services or identification, evaluation, and educational placement of, and the free appropriate public education provided to, such children by the Department of Defense, in accordance with Pub. L. 101-476, as amended, 20 U.S.C. sec. 1401 et seq.; Pub. L. 81-874, sec. 6, as amended, 20 U.S.C. sec. 241; Pub. L. 97-35, sec. 505(c), 20 U.S.C. sec. 241 note; and Pub. L. 102-119, sec. 23, 20 U.S.C. sec. 241(a).

B. Administration

1. The Directorate for the Defense Office of Hearings and Appeals (DOHA) shall have administrative responsibility for the proceedings authorized by this appendix.

2. This appendix shall be administered to ensure that the findings, judgments, and determinations made are prompt, fair, and impartial.

3. Impartial hearing officers, who shall be DOHA Administrative Judges, shall be appointed by the Director, DOHA, and shall be attorneys who are independent of the Section 6 School System or the Military Department concerned in proceedings conducted under this appendix. A parent shall have the right to be represented in such proceedings, at no cost to the government, by counsel and by persons with special knowledge or training with respect to the problems of individuals with disabilities. DOHA Department Counsel normally shall appear and represent the Section 6 School System in proceedings conducted under this appendix, when such proceedings involve a preschool child or child. When an infant or toddler is involved, the Military Department responsible under this part for delivering early intervention services shall either provide its own counsel or request counsel from DOHA.

C. Mediation

1. Mediation can be initiated by either a parent or, as appropriate, the Military Department concerned or the Section 6 School System to resolve informally a disagreement on the early intervention services for an infant or toddler or the identification, evaluation, educational placement of, or the free appropriate public education provided to, a preschool child or child. The cognizant Military Department, rather than the Section 6 School System, shall participate in mediation involving early intervention services. Mediation shall consist of, but not be limited to, an informal discussion of the differences between the parties in an effort to resolve those differences. The parents and the appropriate school or Military Department officials may attend mediation sessions.

2. Mediation must be conducted, attempted, or refused in writing by a parent of the infant, toddler, preschool child or child whose early intervention or special education services (including related services) are at issue before a request for, or initiation of, a hearing authorized by this appendix. Any request by the Section 6 School System or Military Department for a hearing under this appendix shall state how this requirement has been satisfied. No stigma may be attached to the refusal of a parent to mediate or to an unsuccessful attempt to mediate.

D. Practice and Procedure

1. Hearing

a. Should mediation be refused or otherwise fail to resolve the issues on the provision of early intervention services or a free, appropriate public education to a disabled infant, toddler, preschool child or child or the identification, evaluation, or educational placement of such an individual, the parent or either the school principal, on behalf of the Section 6 School System, or the military medical treatment facility commander, on behalf of the Military Department having jurisdiction over the infant or toddler, may request and shall receive a hearing before a hearing officer to resolve the matter. The parents of an infant, toddler, preschool child or child and the Section 6 School System or Military Department concerned shall be the only parties to a hearing conducted under this appendix.

b. The party seeking the hearing shall submit a written request, in the form of a petition, setting forth the facts, issues, and proposed relief, to the Director, DOHA. The petitioner shall deliver a copy of the petition to the opposing party (that is, the parent or the school principal, on behalf of the Section 6 School System, or the military medical treatment facility commander, on behalf of the Military Department), either in person or by first-class mail, postage prepaid. Delivery is complete upon mailing. When the Section 6 School System or Military Department petitions for a hearing, it shall inform the other parties of the deadline for filing an answer under paragraph D.1.c. of this appendix, and shall provide the other parties with a copy of this part.

c. An opposing party shall submit an answer to the petition to the Director, DOHA, with a copy to the petitioner, within 15 calendar days of receipt of the petition. The answer shall be as full and complete as possible, addressing the issues, facts, and proposed relief. The submission of the answer is complete upon mailing.

d. Within 10 calendar days after receiving the petition, the Director, DOHA, shall assign a hearing officer, who then shall have jurisdiction over the resulting proceedings. The Director, DOHA, shall forward all pleadings to the hearing officer.

e. The questions for adjudication shall be based on the petition and the answer, provided that a party may amend a pleading if the amendment is filed with the hearing officer and is received by the other parties at least 5 calendar days before the hearing.

f. The Director, DOHA, shall arrange for the time and place of the hearing, and shall provide administrative support. Such arrangements shall be reasonably convenient to the parties.

g. The purpose of a hearing is to establish the relevant facts necessary for the hearing

officer to reach a fair and impartial determination of the case. Oral and documentary evidence that is relevant and material may be received. The technical rules of evidence shall be relaxed to permit the development of a full evidentiary record, with the Federal Rules of Evidence (28 U.S.C.) serving as a guide.

h. The hearing officer shall be the presiding officer, with judicial powers to manage the proceeding and conduct the hearing. Those powers shall include the authority to order an independent evaluation of the child at the expense of the Section 6 School System or Military Department concerned and to call and question witnesses.

i. Those normally authorized to attend a hearing shall be the parents of the individual with disabilities, the counsel and personal representative of the parents, the counsel and professional employees of the Section 6 School System or Military Department concerned, the hearing officer, and a person qualified to transcribe or record the proceedings. The hearing officer may permit other persons to attend the hearing, consistent with the privacy interests of the parents and the individual with disabilities, provided the parents have the right to an open hearing upon waiving in writing their privacy rights and those of the individual with disabilities.

j. A verbatim transcription of the hearing shall be made in written or electronic form and shall become a permanent part of the record. A copy of the written transcript or electronic record of the hearing shall be made available to a parent upon request and without cost. The hearing officer may allow corrections to the written transcript or electronic recording for the purpose of conforming it to actual testimony after adequate notice of such changes is given to all parties.

k. The hearing officer's decision of the case shall be based on the record, which shall include the petition, the answer, the written transcript or the electronic recording of the hearing, exhibits admitted into evidence, pleadings or correspondence properly filed and served on all parties, and such other matters as the hearing officer may include in the record, provided that such matter is made available to all parties before the record is closed under paragraph D.1.m. of this appendix.

l. The hearing officer shall make a full and complete record of a case presented for adjudication.

m. The hearing officer shall decide when the record in a case is closed.

n. The hearing officer shall issue findings of fact and render a decision in a case not later than 50 calendar days after being assigned to the case, unless a discovery request under section D.2. of this appendix is pending.

2. Discovery

a. Full and complete discovery shall be available to parties to the proceeding, with the Federal Rules of Civil Procedure (28 U.S.C.) serving as a guide.

b. If voluntary discovery cannot be accomplished, a party seeking discovery may file a motion to accomplish discovery, provided such motion is founded on the relevance and materiality of the proposed discovery to the issues. An order granting discovery shall be enforceable as is an order compelling testimony or the production of evidence.

c. A copy of the written or electronic transcription of a deposition taken by the Section 6 School System or Military Department concerned shall be made available free of charge to a parent.

3. Witnesses; Production of Evidence

a. All witnesses testifying at the hearing shall be advised that it is a criminal offense knowingly and willfully to make a false statement or representation to a Department or Agency of the United States Government as to any matter within the jurisdiction of the Department or Agency. All witnesses shall be subject to cross-examination by the parties.

b. A party calling a witness shall bear the witness' travel and incidental expenses associated with testifying at the hearing. The Section 6 School System or Military Department concerned shall pay such expenses when a witness is called by the hearing officer.

c. The hearing officer may issue an order compelling the attendance of witnesses or the production of evidence upon the hearing officer's own motion or, if good cause be shown, upon motion of a party.

d. When the hearing officer determines that a person has failed to obey an order to testify or to produce evidence, and such failure is in knowing and willful disregard of the order, the hearing officer shall so certify.

e. The party or the hearing officer seeking to compel testimony or the production of evidence may, upon the certification provided for in paragraph D.3.d. of the section, file an appropriate action in a court of competent jurisdiction to compel compliance with the hearing officer's order.

4. Hearing Officer's Findings of Fact and Decision

a. The hearing officer shall make written findings of fact and shall issue a decision setting forth the questions presented, the resolution of those questions, and the rationale for the resolution. The hearing officer shall file the findings of fact and decision with the Director, DOHA, with a copy to the parties.

b. The Director, DOHA, shall forward to the Director, Section 6 Schools or the Military Department concerned and the Domes-

tic Advisory Panel copies, with all personally identifiable information deleted, of the hearing officer's findings of fact and decision or, in cases that are administratively appealed, of the final decision of the DOHA Appeal Board.

c. The hearing officer shall have the authority to impose financial responsibility for early intervention services, educational placements, evaluations, and related services under his or her findings of fact and decision.

d. The findings of fact and decision of the hearing officer shall become final unless a notice of appeal is filed under section F.1. of this appendix. The Section 6 School System or Military Department concerned shall implement a decision as soon as practicable after it becomes final.

E. Determination Without Hearing

1. At the request of a parent of the infant, toddler, preschool child or child when early intervention or special educational (including related) services are at issue, the requirement for a hearing may be waived, and the case may be submitted to the hearing officer on written documents filed by the parties. The hearing officer shall make findings of fact and issue a decision within the period fixed by paragraph D.1.n. of this appendix.

2. The Section 6 School System or Military Department concerned may oppose a request to waive the hearing. In that event, the hearing officer shall rule on the request.

3. Documents submitted to the hearing officer in a case determined without a hearing shall comply with paragraph D.1.g. of this appendix. A party submitting such documents shall provide copies to all other parties.

F. Appeal

1. A party may appeal the hearing officer's findings of fact and decision by filing a written notice of appeal with the Director, DOHA, within 5 calendar days of receipt of the findings of fact and decision. The notice of appeal must contain the appellant's certification that a copy of the notice of appeal has been provided to all other parties. Filing is complete upon mailing.

2. Within 10 calendar days of the filing the notice of appeal, the appellant shall submit a written statement of issues and arguments to the Director, DOHA, with a copy to the other parties. The other parties shall submit a reply or replies to the Director, DOHA, within 15 calendar days of receiving the statement, and shall deliver a copy of each reply to the appellant. Submission is complete upon mailing.

3. The Director, DOHA, shall refer the matter on appeal to the DOHA Appeal Board. It shall determine the matter, including the making of interlocutory rulings, within 60 calendar days of receiving timely submitted

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replies under section F.2. of this appendix. The DOHA Appeal Board may require oral argument at a time and place reasonable convenient to the parties.

4. The determination of the DOHA Appeal Board shall be a final administrative decision and shall be in written form. It shall address the issues presented and set forth a rationale for the decision reached. A determination denying the appeal of a parent in whole or in part shall state that the parent has the right under Pub. L. 101-476, as amended, to bring a civil action on the matters in dispute in a district court of the United States without regard to the amount in controversy.

5. No provision of this part or other DoD guidance may be construed as conferring a further right of administrative review. A party must exhaust all administrative remedies afforded by this appendix before seeking judicial review of a determination made under this appendix.

G. Publication and Indexing of Final Decisions

The Director, DOHA, shall ensure that final decisions in cases arising under this Appendix are published and indexed to protect the privacy rights of the parents who are parties in those cases and the children of such parents, in accordance with 32 CFR part 310.

PART 81—PATERNITY CLAIMS AND ADOPTION PROCEEDINGS INVOLVING MEMBERS AND FORMER MEMBERS OF THE ARMED FORCES

Sec.

81.1 Reissuance and purpose.

81.2 Applicability.

81.3 Policy.

AUTHORITY: Sec. 301, 80 Stat. 379; (5 U.S.C. 301).

SOURCE: 43 FR 15149, Apr. 11, 1978, unless otherwise noted.

§ 81.1 Reissuance and purpose.

This part reissued DoD Directive 1344.3, "Paternity Claims and Adoption Proceedings Involving Members and Former Members of the Armed Forces," to standardize procedures for the handling of:

(a) Paternity claims against members and former members of the Armed Forces, and

(b) Requests from civilian courts concerning the availability of members and former members of the Armed Forces to appear at an adoption hear-

ing where it is alleged that such member is the father of an illegitimate child.

§ 81.2 Applicability.

The provisions of this part apply to the Military Departments.

§ 81.3 Policy.

(a) *Members on active duty.* (1) Allegations of paternity against members of the Armed Forces who are on active duty will be transmitted to the individual concerned by the appropriate military authorities.

(2) If there exists a judicial order or decree of paternity or child support duly rendered by a United States or foreign court of competent jurisdiction against such a member, the commanding officer in the appropriate Military Departments will advise the member of his moral and legal obligations as well as his legal rights in the matter. See 42 U.S.C. 659. The member will be encouraged to render the necessary financial support to the child and take any other action considered proper under the circumstances.

(3) Communications from a judge of a civilian court, including a court summons or a judicial order, concerning the availability of personnel to appear at an adoption hearing, where it is alleged that an active duty member is the father of an illegitimate child, shall receive a reply that:

(i) Due to military requirements, the member cannot be granted leave to attend any court hearing until (date), or

(ii) A request by the member for leave to attend an adoption court hearing on (date), if made, would be approved, or

(iii) The member has stated in a sworn written statement (forward a copy with response) that he is not the natural parent of the child, or

(iv) Due to the member's unavailability caused by a specific reason, a completely responsive answer cannot be made.

(4) The member should be informed of the inquiry and the response and urged to obtain legal assistance for guidance (including an explanation of sections of the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. appendix, section 501 et seq., if appropriate).